IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 23RD MAY 2007 / 2ND JYAISHTA 1929

WP(C).No. 20965 of 2006(U)

PETITIONERS:

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1. **VINU KOSHY ABRAHAM,**
   10 B4, ABM TOWERS,
   KADAVANTHARA, COCHIN-682 020.

2. **ABM BUILDERS PVT LTD.,**
   KADAVANTHARA, COCHIN-682 020,
   REPRESENTED BY ITS MANAGING DIRECTOR,
   M.K.ABRAHAM.

BY ADV. SMT.T.D.RAJALAKSHMI
SRI.E.R.VENKATESWARAN

RESPONDENTS:

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1. **TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.**

2. **THE SECRETARY, CORPORATION OF COCHIN, COCHIN-682 011.**

3. **A B M TOWERS RESIDENTS ASSOCIATION, ABM TOWERS, KADAVANTHARA, COCHIN-20, REPRESENTED BY ITS PRESIDENT, SIDHARTH GOSWAMI.**

BY ADV. SRI.SANTHEEP ANKARATH
SRI.S.RAMESH BABU,SC,COCHIN CORPORATION

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/05/2007 ALONG WITH WPC NO. 23419 OF 2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.20965/2006 U

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE SALE DEED DTD. 29/05/2003 EXECUTED IN FAVOUR OF THE FIRST PETITIONER.**

EXT.P2: **COPY OF THE COMPLAINT FILED BY THE 3RD RESPONDENT BEFORE THE 2ND RESPONDENT DTD. 5/09/2005.**

EXT.P3: **COPY OF THE ORDER DTD. 31/10/2005 PASSED BY THE 2ND RESPONDENT.**

EXT.P4: **COPY OF THE COUNTER AFFIDAVIT FILED BY THE 2ND RESPONDENT BEFORE THE 1ST RESPONDENT IN APPEAL NO. 942/05 DTD. 16/12/2005.**

EXT.P5: **COPY OF THE COMMON ORDER PASSED BY THE 1ST RESPONDENT IN APPEAL NO.937/05 AND 942./05 DTD. 21/06/2006.**

3RD RESPONDENT'S EXHIBIT:

EXT.R3(A): **COPY OF THE APPROVED PLAN DTD. NIL.**

/TRUE COPY/

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PIUS C. KURIAKOSE,J.

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W.P.(C)No. 20965 and 23419 of 2006

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Dated this the 23rd May, 2007

JUDGMENT

The common order dt.21.6.06 passed by the Tribunal for Local Self Government Institutions in appeal Nos.937 of 2005 and 942 of 2005 is under challenge in both the writ petitions. Sri.Vinu Koshy Abraham and M/s.ABM Builders Pvt. Ltd. are the petitioners in WP(C) No.20965 of 2006 wherein the Tribunal, the Secretary of the Corporation and M/s.ABM Towers Residents Association are respectively Respondents 1 to 3. The order of the Tribunal is produced as Ext.P5 in that case. WP(C) No. 23419 of 2006 is filed by M/s.ABM Towers Residents Association and the respondents therein are the State of Kerala, the Greater Cochin Development Authority, the Corporation of Cochin (respondents 1 to 3) and Sri.M.K. Abraham, Sri.Babu Thomas, M/s.ABM Builders Pvt. Ltd. and Vinu Koshy Abraham (respondents 4 to 7). The impugned order of the Tribunal is produced as Ext.P14 in that case. For convenience, I am referring to the documents as they are marked in WP(C) No.23419 of 2006.

2. Appeal No.937 of 2005 was preferred before the Tribunal by Sri.Vinu Koshy Abraham arraying the Secretary of the Corporation as

respondent and in that appeal the ABM Towers Residents Association got itself impleaded as additional 2nd respondent. Appeal No.942 of 2005 was filed by the ABM Towers Residents Association arraying the Corporation, Sri.Babu Thomas, M/s. ABM Towers Residents Association, Sri.M.K. Abraham and Sri.Vinu Koshy Abraham as respondents. Both the appeals were directed against the order of the Secretary of the Corporation dt.31.10.05 issued on a complaint submitted by M/s.ABM Towers Residents Association that several illegalities had been perpetrated while carrying out the construction of the building, ABM Towers by violating the provisions of the Kerala Municipality Act and the Kerala Municipality Building Rules and by converting the basement and ground floor of the building and by closing one of the entrances of the building for the installation of the generator and also by installing a tele-communication tower on the top of the building. The Corporation passed the order stating that the construction of the building being on the basis of a permit issued as per the provisions of the Kerala Building Rules, 1984, wherein there is no provision available for maintaining recreation area as contained in Rule 50 of the Kerala Municipality Building Rules, a recreation area is not necessary in the building. The Corporation also held that after

obtaining occupancy certificate the builder has converted a portion of the basement ear marked for parking as shop rooms and that the direction for demolition of the shop rooms so constructed by conversion of the parking space has not been complied with. The Corporation also rejected the application for regularisation of the installation of the tele-communication tower on the reason that relevant documents has not been produced. The Tribunal disposed of the appeals holding that there was no sufficient materials on record to enter into a conclusion regarding the constructions in respect of which completion certificate had been issued and that it was absolutely necessary to direct the Secretary of the Corporation to inspect the building along with the Town Planning Officer and to ascertain whether the construction of the building was in accordance with the statutory provisions and in compliance with the approved plan and the completion plan and to initiate proceedings under Section 406 of the Municipalities Act in case of any construction in violation of the statutory provisions or in deviation of the approved plan or completion plan. The Tribunal issued four specific directions through Ext.P14 impugned order.

3. In WP(C) No.23149 of 2006, Ext.P14 is impugned on the

ground that the order of remand passed by the Tribunal was totally unwarranted, since it had been found by the Tribunal itself that there is no denial by M/s.ABM Towers Residents Association regarding the deviation from the original approved plan and the non-extension of the building permit within the legally permissible period and that the Tribunal ought to have decided the matter on the basis of those admissions by non-traverse. It is urged in that Writ Petition that the observations in the order regarding the parking space and the directions to verify whether the parking space ear marked in the completion plan is the statutory parking space is an unwarranted query in that the plan specifically shows the area as parking space, and the builder or the 7th respondent are not entitled to convert the parking space or deviate from the approved plan. It is contended that conversion of the parking space to shop rooms would clearly violate the floor area ratio since the building is already having the maximum floor area. It is further urged that the completion plan is the final plan and there cannot be any deviation from the completion plan. It is accordingly contended that direction for conduct of verification of parking space was unwarranted and the Tribunal ought to have upheld the finding of the Corporation regarding parking space

and directed the demolition of the illegal conversions made to the parking area. It is also urged that it has been conceded by the 7th respondent Sri.Vinu Koshy Abraham in WP(C) No.20965 of 2006 filed by him that he has violated the Building Rules by deviating from the approved plan and that he had not got extension of the permit within the time. Hence it was automatic that KMBR applies and the building was to have a recreation area as provided in Rule 50. It is therefore obligatory on the part of the Corporation to see to it that neither the 7th respondent nor the 4th respondent, his father alters, modifies or constructs in the recreation area as directed by the Tribunal and it is also incumbent upon the Corporation to initiate action to evict the illegal occupants inducted by respondents 4 and 7 into the recreation area and the parking spaces. The Corporation is acting under the influence of respondents 4 and 7 and the following are the reliefs sought for in WP(C) No.23419 of 2006.

> a. Issue a writ of certiorari or any other writ, order or direction calling for the records leading to Ext.P14 and set aisde the portion remanding the matter to the 3rd respondent and declare that the building rules applicable to the Building is KMBR 1999 and hence the petitioner is entitled to have a recreation area as provided in Rule 50 of the same and that the parking space earmarked in the completion plan cannot be

converted or altered in any way;

b. Issue a writ of mandamus or any other writ, order or direction directing the 3rd respondent to initiate action against the respondents 4 to 7 for the illegal conversion of the approved plan and violation of building rules and evict the illegal occupants in the approved recreation area and parking space, inducted by the respondents 4 to 7 and restore its possession to the petitioner.

4. In WP(C) 20965 of 2006 it is urged that it has been accepted by the Corporation that completion of the building is to be made on the basis of the Kerala Building Rules 1984 only. It is pointed out that that the building permit is issued under 1984 building Rules and that the Corporation along with the Town Planning Officer has granted additional permission and extended the period for completion of the work upto 2001. A judgment of this Court reported in **Narahari Rao v. State of Kerala & others 1999 (1) KLJ 969** is relied on to contend that permit issued under the earlier act would continue to be operative and therefore permission granted for a period of 3 years upto 2001 will continue to be valid in terms of the existing rules. It is further pointed out that the completion certificate was issued on 17.04.2004 after collecting necessary fees and fine for not seeking any extension within the period, the Corporation condoned the delay

in completing the construct ion by accepting fine and fees.

5. As regards the question whether there is any violation in respect of the car parking area into shop rooms, it is pointed out that as per the terms of the agreements entered into between the members of the Association and M/s.ABM Builders Pvt. Ltd, the members of the Association will not have any right in the commercial area situated in the eastern side. Therefore conversion of the car parking area on the eastern side is not a concern of the members of the Association at all. The complaint of the members of the Association can only be regarding the non-availability of car parking area there is no scope for such a complaint since the ABM Builders Pvt. Ltd. have complied with the statutory requirement as well as the terms of the agreement. It is further urged that the Corporation only need be concerned only about diversion of car parking for the occupants of the commercial area. The builder has already provided necessary car parking area as per statutes for occupants of the residential area. There is enough space to provide parking area for everybody including those who are coming to the commercial area and therefore the objection regarding conversion of the car parking area into shop room was not relevant. The Tribunal has not taken

any decision on the above aspect which was argued seriously before the Tribunal.

6. It is conceded that there is deviation of construction without providing a basement area. But it is claimed that the ground floor is converted into car parking and the second petitioner has therefore not violated the permission granted. As per the construction presently available, all the apartment owners have been provided with car parking area treating the ground floor as basement area where the Generator set as well as the other facilities are provided. Thus there is no violation in respect of the residential area. If the direction of the Corporation to initiate action under Section 406 is allowed to stand, the entire building have to be demolished and the same will cause serious prejudice to the writ petitioners. It is reiterated that as far as the shopping complex is concerned, there is no violation at all, since sufficient car parking area is available and at any rate the owners of the residential apartments have right, if any, over the shopping area, the same is assigned completely to the first writ petitioner. Therefore the 1st petitioner and nobody else is aggrieved and affected by the 2nd direction of the Tribunal's order to initiate action under Section 406. It is the 3rd direction in the order of

the Tribunal which comes up for serious most attack. This direction will show that the Tribunal has taken a view that the applicable Rule is KMBR, 1999 and the question to be considered is whether there is parking space under that Rules and as per the completion plan. But the contention of the petitioners is that it is the 1984 rules which apply and that the 1999 Rules do not apply at all. The appellate authority could have decided that the issue correctly while looking into the relevant records. In the instant case it would appear as if the appellate authority has found that it is the 1999 rules which apply. Even though the order appears to be an order of remand with the present findings therein there is a likelihood of the Secretary of the Corporation passing orders of demolition thereby depriving the petitioners even of their right of appeal. The prayers in WP(C) No.20965 of 2006 are :

1. issue a writ of certiorari quashing Ext.P5;
2. issue a writ of mandamus restraining the Secretary of the Corporation from taking any action against the petitioners and the building pursuant to Ext.P5.

7. In WP(C) No.23419 of 2006 a counter affidavit has been filed by respondents 4, 6 and 7. It is contended therein that the present writ petition filed by ABM Towers Residents Association which was registered on 18.7.01 with the object of taking over, operating and

maintaining all the common properties of ABM Towers consisting of apartments at Kadavanthara, is not maintainable. It is further contended that in the above context that members of the Association are owners of their respective apartments and also the common areas only. The Association has been founded by its members for the up keep of the common facilities like stair case, lift, water tanks, septic tanks, open space, outer walls etc only. Neither the Association, nor its president is entitled to file a writ petition unless the individual beneficiaries claim their right individually. Most of the individual owners are not staying in the apartments which have been let out to various parties. The wife of the 4th respondent who is the Managing Director of the 6th respondent-Company and also the 7th respondent who is the son of the 4th respondent are having ownership over certain apartment and they have not authorized the signatory to the writ petition to file the writ petition. They have no objection regarding the construction. The 4th respondent, being the MD of the 6th respondent-Company is also one of the Executive members of the petitioner Association and no meeting of the Association has been convened in which the President has been authorized to file the writ petition. It is contended that after the completion of the construction

and passage of title to various allottees no rights survive with the 6th respondent so as to entail liability to be sued against. The 7th respondent purchased the commercial area by paying valid consideration and on the terms of the sale deed itself no rights have been given to the members of the apartment owners' association over the commercial area. These aspects will be clear from a mere perusal, of Ext.P6 document. The commercial area is exclusively owned by the 7th respondent and the agreement positively and negatively confirms the right of the apartments' owners as well as the owners of the commercial area including shop rooms. The rights of the parties are governed by contracts and unless the contract specifically provides for any right for the apartment owners Association, they cannot have any right over the commercial area. It is contended that the issue was considered by this Court when an electric line was sought to be connected to the shop rooms from the panel board. This Court under Ext.P12 judgment held that terms of the agreement is binding on the parties and relegated the matter to be considered by a Civil Court. The present Writ Petition is barred by principles of res judicata. It is submitted that once again the 7th respondent approached this Court by filing WP(C) No.32383 of 2005

complaining of the obstructions made by the petitioner association in the matter of taking electric connection from the panel board to the shop rooms in the commercial area. In that Writ Petition Ext.P13 judgment was passed and the parties were relegated to the Civil Court. Finally the 7th respondent approached the Civil Court by filing OS No.648 of 2005. In that suit the application for injunction submitted by the 7th respondent was allowed and Ext.R4(a) dt.18.1.06 is the order passed by the learned Subordinate Judge. A Civil Miscellaneous Appeal preferred by the petitioner association is pending against Ext.R4(a). The Writ Petition is not maintainable because of that also. It is more seriously contended that the original plan was approved under 1984 Building Rules, the time was extended and permission was granted for constructing 1+10 floors. Under 1984 Rules, there is no provision for recreation area. Subsequently after the commencement of the new Rules, 1999 and as per the relevant provisions contained therein, extension of time can be granted for completion of the project under the old Rule. Accordingly the Corporation collected the necessary fees for extension of time for the completion of the building. Therefore Rule 50 contained in 1999 will not apply and this is the reasoning stated by the Corporation

while passing Ext.P11. The above reasoning was not liable to be interfered at all by the Tribunal. But as regards the basement area on the shopping side it is evident from the plan produced by the petitioner that the 6th respondent converted the basement car parking into shop rooms, as the 6th respondent has already provided sufficient car parking area for the apartment owners and in respect of the commercial area there was no necessity for providing car parking area under the Rule and there is ample space available in front of those area where cars can be parked. The Cochin Corporation is opposed to the 6th respondent's dealing with the area ear marked as parking area into shop rooms. But the Corporation collected necessary licence fees and fine and approved the construction. The contention of respondents 4, 6 and 7 that there was no necessity for providing any car parking area under the Rules and that there is no violation of the statutory rules and these facts are not properly considered by the Tribunal which has now passed a blanket remand order. The appellate authority ought to have got a report from the Corporation regarding the contentions raised by respondents 4, 6 and 7 that there is no necessity for providing car parking on the commercial area and also as to whether the Corporation has not

collected necessary licence fee treating that there is enough car parking space in front of the commercial area.

8. The 5th respondent is Sri.Babu Thomas in whose favour the GCDA originally alloted the plot measuring 51.52 cents of land for completing construction, who had entered into partnership with Sri.Mohan Abraham for the purpose of developing the land by construction of a residential building(ABM Properties) and entered into a construction contract with the 6th respondent for the purpose of constructing a building in the plot allotted to 5th respondent. The 5th respondent has filed a counter affidavit. The 5th respondent while conceding the partnership arrangement and execution of the construction contract with the 6th respondent contends that for the smooth running of the construction company, without impediment or hindrance due to the absence of the 5th respondent, who was enjoyed in other construction works elsewhere and since the 4th respondent was a relative who envisaged the confidence of the 5th respondent, at that time a registered power of attorney was given by the 5th respondent to the 4th respondent who was trusted to proceed with the construction of the multi storied building-ABM Towers. Notwithstanding the execution of the power of attorney there was an

understanding that every thing has to be conducted as per terms and conditions on which the company proceeded with. Everything had to be placed on the board meetings conducted periodically and consent of the directors/partners will be received before further proceeding with the affairs of the company which was entrusted with the work of construction of the building. But from 2001 onwards the 4th respondent deviated from the above principle. The 4th respondent was at that time engaged with the shopping complex work. The entire management of the construction work was done by 4th respondent. As per the original plan and the brochures, the entire building and premises were meant for the use and occupation of the 54 apartment owners. There is no provision for Commercial floor or shop rooms in the entire building for outsiders. The basement was reserved for the parking space of vehicles of the 54 apartment owners. The ground floor was meant for recreation of the occupiers of the 54 apartments. The open terrace above the flat was also meant for the common use of the apartment owners. The 5th respondent as the owner of the site and director of ABM builders and the permit holder of ABM towers had not done anything towards alteration of the above meant plan before any authorities. 5th respondent therefore may not be made a party

to this proceedings along with the 4th respondent who was the Managing Director of ABM builders or his son, the 7th respondent. The 7th respondent has no right to purchase the ground floor or any part or tamper with any use of the ABM Towers' residents. Being fed up with the duping and diabolical character of the 4th respondent and the attitude of cheating which he kept in his dealings, the 5th respondent cancelled the power of attorney to avoid such future acts vide cancellation deed, produced as Ext.R5(a). Ext.R5(b) is copy of the registered notice of information regarding Ext.R5(a). Paper publication was given through Malayala Manorama daily regarding the cancellation. Alteration and conversion of the original plan were made by the 4th respondent in gross misuse of the power of attorney and position of the managing director of ABM builders and against the knowledge and information of the 5th respondent. Accounts have been kept away and the the 5th respondent was kept in darkness regarding the affairs. It is claimed that the 5th respondent has not done anything in detriment to the interest of the writ petitioners. The 4th respondent alone is responsible for the violation and variations to the original plan and unauthorised assignment to the 7th respondent who is none other than his son with the intention to cheat the

apartment owners. All along the 5th respondent was at Kozhikode and had to leave ABM Towers construction site towards the final stages of the construction work, due to the 4th respondent's mis-guidings. Legal actions were not initiated only to avoid unpleasantness and difficulties for the purchasers of the apartments. The 5th respondent had no intention at all to violate the KMBR Rules or act in detriment to the interest of the petitioners. The price increase at an unavoidable juncture had to be met, but because of this, the 5th respondent refrained from proceeding against the 4th respondent earlier when he deviated from the rules of the 6th respondent. If the 5th respondent had initiated any action that would have created difficulties for the purchasers and hence to fulfill the moral and equitable obligation to the petitioners, he has kept quiet to the atrocities done by the 4th respondent. The 5th respondent has no information regarding the suit. If summons were accepted on behalf of 5th respondent by the 4th respondent and representation made in the suit without his knowledge, the same were in gross violation of the cancellation of the power of attorney. All actions of the 4th respondent in violation of the terms and conditions of agreement are illegal and is to be rectified at the expense of the 4th respondent. But

the 4th respondent is solely responsible for his intentional acts. The counter affidavit concludes by contending that the 4th respondent has no right to transfer any part of the ABM tower inclusive of the premises to any of the family members including his wife, or the 7th respondent- his son. The power of attorney had already been cancelled and transfer of any part on the basis of the power of attorney is void ab initio.

9. A reply affidavit has been filed by the petitioner reiterating the contentions and maintaining that the Writ Petition is maintainable. It is pointed out that the petitioner is a registered association and is entitled to sue for and on behalf of all the members of the association regarding any rights, liabilities or interest of the members. The representative capacity of the petitioner association were not disputed by the contesting respondents at any earlier point of time. The earlier writ petition filed by the 7th respondent was regarding drawing of electric connection. The suit is only for injunction simpliciter. Ext,.R4(a) also is regarding drawal of electric connection. The observations on the title of the parties made in Ext.R4(a) is set aside by the District Court. It is then pointed out that going by the original permit, the building ought to have been completed before

2001. The same was not completed. According to the petitioner, only ground floor and first two floors were completed by 2003. Thus the owner had to get renewal of the permit. That was not done. The permit lapsed. Hence there is no question of collecting fees for extension of time for completion of the building. Renewal can be granted only with regard to a building that is completed as per the permit originally granted. Admittedly there are deviations. Hence there is no question of renewing the permit. The contention that the Corporation collected licence fee and fine and approved the construction is incorrect, unsustainable.

10. Mr.E.R.Venkiteswaran, Advocate addressed me on behalf of the petitioners in W.P.C.No.20965 of 2006 while Mr.Santheep Ankarath, Advocate addressed me on behalf of his clients, the petitioners in W.P.C.No.23419 of 2006. Smt.M.A.Zohra, Advocate addressed me on behalf of the 5th respondent in W.P.C.No.23419 of 2006. My attention was drawn by the learned counsel to the pleadings raised by their respective parties and to the various documents placed on record particularly to the impugned order of the Tribunal, Exts.P1, P3 and P4 in W.P.C.No.20965 of 2006 and Exts.P1, P2, P3, P4 and P5 in W.P.C.No.23419 of 2006 apart from Ext.R5(c)

deed of cancellation of Power of Attorney produced by Smt.Zohra's client. My attention was drawn to various statutory provisions such as Rule 50, Rule 15A of the Kerala Municipality Building Rules, 1999, Section 394, Section 406 sub-section (1) (i) and (iii) and Section 407 of the Kerala Municipality Act and also to Rule 5(A) of the Kerala Building Rules, 1984. Mr.E.R.Venkiteswaran would rely on the judgment of this court in **Ashalatha v. Commissioner, Cannanore Municipality** (1989 (2) KLT 681) and also to the decision of the Supreme Court in **R.Satyanarayana v. Shantha (SMT) and Others** [(1999) 5 SCC 704]. As directed by me the Standing Counsel for the Corporation Mr.C.M.Suresh Babu made available for my perusal the files relating to the subject construction. Mr.E.R.Venkiteswaran would also place before me an album containing photographs of the building.

11. Having appreciated the rival submissions in the light of the pleadings and the materials placed on record as well as the statutory provisions, I am of the view that there is no reason having regard to the contours of this court's jurisdiction for judicial review to interfere with the common order Ext.P14 in W.P.C.No.23419 of 2006 passed by the Tribunal. Facts have been marshalled by the Tribunal correctly

and its conclusions are founded on materials which were available. Notwithstanding Mr.E.R.Venkiteswaran's arguments on the basis of certain entries in the municipal files KRP 2-721/2001 and receipt No.31880 dated 13.2.2004 issued by the Corporation in the name of the permit holder Mr.Babu Thomas against the remittance of a sum of Rs.70,018/- by way of licence fee and Rs.1500/- by way of fine, I am not convinced presently that the building permit dated 30.5.1998 on the strength of which only the construction was taken up, was valid and current at the time when the Corporation issued the completion certificate dated 17.2.2004. I do not find any infirmity with the view of the Tribunal that the legality of the construction of the building is to be evaluated with reference to the date of completion of the construction and as to whether the permit on the basis of which the construction was made was valid on the date of submission of the application for completion certificate. The Tribunal's view that only for the reason that the permit dated 30.5.1998 is one issued under 1984 Building Rules, it is those rules which should govern the construction is not incorrect. The Tribunal, according to me, was perfectly justified in setting aside the order of the 1st respondent-Corporation that since there is no provision for recreation space as

per 1984 Building Rules, the said provision does not apply to the building in question. Even though the Tribunal in very clear terms expressed its displeasure about the manner in which the 1st respondent-Corporation submitted its pleadings, in this court also I find that the Corporation has not chosen to file a counter affidavit explaining as to why the provisions of the Kerala Municipality Building Rules, 1999 including Rule 50 does not apply to the building in question notwithstanding the Corporation's own endorsement in the completion certificate that the construction of the building is in accordance with the Kerala Municipality Building Rules, 1999. As rightly noticed by the Tribunal the finding of the Corporation regarding the requirement of recreation space in its order dated 31.10.2005 (Ext.P11 in W.P.C.No.23419/06) is inconsistent with the Corporation's Certificate for the completion plan that the construction was made in accordance with the provision of KMBR, 1999. If the building permit dated 30.5.1998 was not valid and current on the date on which the application for completion certificate was submitted and if the completion of the building was after the expiry of the period of that permit issued under 1984 Rules, it will be necessary to follow the provisions of KMBR, 1999 while considering issuance of

completion certificate. But for the finding in the above line, the Tribunal's order is only an order of remand for passage of fresh orders after complying with certain directions. The first direction issued by the Tribunal is that the inspection of the building by name 'A.B.M.Towers' shall be conducted by the Secretary of the Corporation along with its Town Planning Officer so as to find out whether there is any construction in violation of the statutory provisions or in deviation from the approved plan and the completion plan based on which completion certificate dated 17.2.2004 is issued under direction No.3 the Tribunal has found that the legality of the construction is to be evaluated specifically mentioning the date of completion and as to whether the permit was having validity on the date of the submission of the application for completion certificate and as to whether the parking space earmarked in the approved plan and completion plan was the statutory parking space and as to whether the building is having a basement floor as shown in the approved plan.

12. The petitioners in W.P.C.No.20965 of 2006 have a grievance that certain explanations offered by them regarding the parking space, i.e., that the Apartment Owners Association cannot have any say in the matter of the parking area provided to the

shopping area; that all the apartment owners have been provided with parking area else where were not considered by the Tribunal at all. For these reasons the petitioners in W.P.C.No.20965 of 2006 contend that the 2nd direction in the order of the Tribunal that proceedings under Section 406 of the Kerala Municipality Act shall be initiated in case of violation of any statutory provision or deviation from the approved plan or completion plan has got the trapping of a final order and that the Tribunal by its order has deprived them of their right of appeal. The 2nd direction in the impugned order, according to them, may lead to calamitous consequences from the point of view of the Apartment Owners since the entire building will have to be demolished if that direction is literally given effect to. I am not much impressed by the arguments advanced on behalf of the petitioners in W.P.C.No.20965 of 2006 in the above lines. The Tribunal has specifically directed that the final orders under Section 406 shall be initiated only after rendering a hearing opportunity to the parties and other interested parties, if any, and considering the possibility of regularisation invoking the proviso to Section 406 (1) (iii) of the Kerala Municipality Act. It is hereby clarified that if it is seen that any portion of the 54 residential apartments will have to be

demolished, final decision in that regard will be taken by the Corporation only after issuing notices to the individual owner or owners of those apartments and after hearing him/them also.

13. An aspect which was highlighted before me by Mr.Santheep Ankarath very much was that there has been some soft-shelling on the part of the Corporation on the complaints submitted by them. The attitude of the Corporation before the Tribunal in filing an evasive counter affidavit and in refraining from filing any counter affidavit at all before this court lends some credence to the above grievance of the petitioners in W.P.C.No.23419 of 2006. Under these circumstances, even as I am substantially agreeing with the conclusions of the Tribunal, I direct that the inspection which has been ordered by the Tribunal under direction No.1 in its impugned order shall be a joint inspection to be conducted by the Secretary of the Corporation, the Town Planning Officer and a Commissioner to be appointed by this court. Accordingly, I appoint Mr.M.A.Thomas Kutty, Advocate of this court as Commissioner. The joint inspection ordered by the Tribunal under direction No.1 in the impugned order shall be conducted by the Secretary of the Corporation and the Town Planning Officer along with Mr.Thomas Kutty. The Standing Counsel for the

Corporation shall furnish Mr.Thomas Kutty photostat copies of the building permit dated 30.5.1998 and also the approved plan on the basis of which the permit was issued. He shall also furnish copy of the completion plan based on which the completion certificate dated 17.2.2004 was issued and also copy of the completion certificate to Mr.Thomas Kutty. Mr.Thomas Kutty will prepare a report regarding his findings at the inspection. He shall also furnish through the report his impressions as to whether the building permit dated 30.5.1998 was valid and current at the time when the application for completion certificate was submitted and also as to whether the parking space earmarked in the approved and the completion plan was the statutory parking space and further as to whether the building in question has a basement floor as shown in the approved plan. In order to enable Mr.Thomas Kutty to prepare his report, the Standing Counsel for the Corporation and the Secretary of the Corporation will permit Mr.Thomas Kutty to have complete access to the files which are placed before this court and any other material which will vindicate the Corporation's stand that the permit dated 30.5.1998 was valid and current at the time of submission of the completion plan. The report prepared by Mr.Thomas Kutty shall be

submitted by him to the Secretary of the Corporation with copy to the petitioners in both the Writ Petitions and also to the 5th respondent in W.P.C.No.23419 of 2006. The above report will also be considered by the 1st respondent before he passes final orders as directed by the Tribunal under direction No.2. Orders to be passed by the 1st respondent shall be communicated to the parties whose right of appeal regarding the decision on the question as to the governing rule-whether the Building Rules, 1984 or the KMBR, 1999 -is hereby reserved.

14. The remuneration for the Commissioner is fixed as Rs.20,000/- to be paid equally by the petitioners in the Writ Petitions. Expenses, if any, to be incurred by the Commissioner will also be shared equally by them.

Both the Writ Petitions are disposed of as above upholding the Tribunal's order subject to the modifications, observations and reservations hereinabove made. There will be no order as to costs.

PIUS C.KURIAKOSE, JUDGE

btt/srd